

THE COMPTROLLER GENERAL THE UNITED STATES

WASHINGTON, D.C.

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FILE:

B-181317

DATE:

MATTER OF:

Porter C. Murphy - Overtime Compensation

for Traveltime

DIGEST:

- Employee was allowed to commute in Government vehicle from Fort Sam Houston to Camp Bullis, his duty station. Employee's workday started at 7:30 a.m., at which time he picked up the vehicle at Fort Sam Houston. He returned from Camp Bullis after 4 p.m., the end of his regular workday. His claim for overtime compensation for the return travel is denied since such traveltime was a part of his normal travel from work to home and commuting time is noncompensable under 5 U.S.C. § 5544(a) (1970).
- Government vehicle in which employee commuted carried essential equipment and supplies for his employer. Commuting time is generally not compensable under the Fair Labor Standards Act (FLSA), however, where the commuting employee also transports equipment and supplies for the employer, the traveltime is compensable overtime even though commuting in the Government vehicle is of a benefit to the employee since the activity is employment under the FLSA as it is done in part for the benefit of the employer.

This action is in response to Mr. Porter C. Murphy's appeal of our Claims Division's denial of his claim for overtime compensation believed due incident to his employment with the Department of the Army.

Mr. Murphy is employed at Camp Bullis, Texas, as a wage board employee. From May 18, 1964, through May 31, 1974, the period during which Mr. Murphy claims overtime compensation, Mr. Murphy's tour of duty was from 7:30 a.m. to 4 p.m. daily, Monday through Friday. During this period of time Mr. Murphy was allowed to report for duty at Fort Sam Houston at 7:30 a.m. whereupon he would drive a Government vehicle to Camp Bullis, his official duty station. Mr. Murphy worked at Camp Bullis until 4 p.m., at which time he departed in a Government vehicle for Fort Sam Houston where he dropped off the vehicle and then continued home

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by private means. It is apparently this return trip to Fort Sam Houston, which occurred outside of regular duty hours, for which Mr. Murphy claims overtime compensation.

In its report to us on the matter, the Department of the Army states that the use of a Government vehicle between Fort Sam Houston and Camp Bullis was not a requirement of Mr. Murphy's position. Rather, this arrangement was one of mutual convenience. Mr. Murphy's use of a Government vehicle was advantageous to him in that he did not have to pay for the long commute from Fort Sam Houston to Camp Bullis, Fort Sam Houston being much closer to his home than Camp Bullis. In addition, Mr. Murphy did not have to leave for work as early as he would have had to had he reported directly to Camp Bullis since he was traveling from Fort Sam Houston to Camp Bullis during his regular duty time.

On the other hand the vehicle used by Mr. Murphy to travel between Camp Bullis and Fort Sam Houston carried various equipment and supplies. This cargo was loaded prior to departure from Camp Bullis at 4 p.m. and was not unloaded at Fort Sam Houston until the following morning at 7:30 a.m., the start of Mr. Murphy's regular duty hours. The Department of the Army states that had Mr. Murphy not driven the vehicle during the times described above, the vehicle would have to have been driven at some other time during the day in order to transport the equipment and supplies. The practice of allowing Mr. Murphy to drive to and from Camp Bullis was discontinued after May 31, 1974, because of the then current fuel shortage.

The Department of the Army's report stated further that Mr. Murphy was not ordered to perform any overtime by an official authorized to order or approve overtime. On this basis our Claims Division denied Mr. Murphy's claim. The Claims Division also noted that such portion of Mr. Murphy's claim which occurred prior to November 4, 1964, is barred by the Act of October 9, 1940, 54 Stat. 1061, since his claim was first received by the General Accounting Office on November 4, 1974.

It is not necessary to reach a determination as to whether Mr. Murphy's traveltime was ordered or approved. The compensation of wage board employees for overtime is provided for at 5 U.S.C. § 5544(a) (1970), in pertinent part, as follows:

"* * * Time spent in a travel status away from the official duty station of an employee subject to this subsection is not hours of work unless * * *."

A similar provision concerning General Schedule employees, 5 U.S.C. § 5542(b)(2) (1970), has been construed by this Office to mean that normal commuting time between an employee's residence and his duty station is not "time spent in a travel status away from the official duty station" and is thus not compensable traveltime. 41 Comp. Gen. 82 (1961); B-169178, May 12, 1970.

The above-construed portion of section 5544(a) was in effect for the last 7 years of Mr. Murphy's claim. Prior to that time no such provision was applicable to wage board employees although such a provision, 5 U.S.C. § 912b (1964), now 5 U.S.C. § 5542(b)(2) (1970), was applicable to General Schedule employees. In decision B-151950, December 17, 1964, we stated that although wage board employees were not covered by 5 U.S.C. § 912(b) the same criteria in decisions of our Office were to be applied to wage board employees for such travel outside their hours of duty on a regularly scheduled workday. Therefore, we held that wage board employees were not entitled to overtime compensation for traveltime similar to that performed here by Mr. Murphy.

Even though Mr. Murphy did drive a Government vehicle after work hours from Camp Bullis to Fort Sam Houston, and this travel did benefit the Government Mr. Murphy was in essence performing the major part of his work-to-home commute at Government expense. He performed no work on arriving at Fort Sam Houston but rather continued home by private means. Accordingly, in light of the above-cited decisions we find that since Mr. Murphy was actually commuting to and from work he is not entitled to overtime compensation for the travel in question.

We note that the application of the Fair Labor Standards Act (FLSA) to Federal employees became effective on May 1, 1974, (29 U.S.C. § 202, see note (1974 Supp.)), and the last month of Mr. Murphy's claim, May 1 to May 31, 1974, would therefore be covered by the overtime provisions of the said Act if Mr. Murphy is nonexempt from the FLSA. There is no statement in the record concerning Mr. Murphy's exemption status under the FLSA. The Department of the Army, therefore, should determine Mr. Murphy's status and if he is nonexempt, the following statement of entitlement under the FLSA is for application.

In the ordinary situation normal home-to-work and return travel is not compensable under the Fair Labor Standards Act, 29 C. F. R. § 785.35. However, it has been held that when an employee drives an employer's vehicle to or from a job site and he carries in the vehicle essential tools and equipment, such traveltime is work performed for the benefit of the employer and is compensable under the FLSA. 29 C.F.R. § 785.38. In Secretary of Labor v. Field, 495 F. 2d 749 (1974) the court held at p. 751:

"[1,2] Field argues, and there is evidence bearing him out, that use of the truck was of importance to Audet as a means of getting to the jobs. Audet testified, not unreasonably, that had he been forced to supply his own transportation to the various out of town sites, he would have quit. However, consistent with the above-quoted finding that the truck's essential purpose was to convey tools and equipment, the court also found that the trucks 'were primarily utilized as an integral and indispensable function of the defendant business.' We cannot say that these findings are clearly erroneous, F.R.Civ.P. 52(a), nor are they inconsistent with a benefit also having been bestowed upon Audet. It is irrelevant that Audet and the other employees might have reached the jobsite by personal transportation or that the employer might have stocked the jobsite without the use of the trucks. The activity is employment under the Act if it is done at least in part for the benefit of the employer, even though it may also be beneficial to the employee. '[T]he crucial question is not whether the work was voluntary but rather whether the [employee] was in fact performing services for the benefit of the employer with the knowledge and approval of the employer.' Republican Publishing Co. v. American Newspaper Guild, 172 F. 2d 943, 945 (1st Cir. 1949). Cf. United States. v. Rosenwasser, 323 U.S. 360, 362, 65 S. Ct. 295, 89 L. Ed. 301 (1945).

See also DA & S Oil Well Servicing Inc. v. Mitchell, 262 F. 2d 552 (1958). Accordingly, since it is admitted that Mr. Murphy drove a vehicle which carried various equipment and supplies between Camp Bullis and Fort Sam Houston for the benefit of his employer, he is

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entitled under the FLSA to overtime compensation for the period May 1, 1974, to May 31, 1974, for such work if he is determined to be nonexempt. Since Mr. Murphy was on duty and has been paid for the Fort Sam Houston to Camp Bullis portion of the travel, he would only be entitled to overtime compensation for the return portion of travel which took one-half hour and which was performed outside of regular duty hours.

Action should be taken by the Department of the Army consistent with the above.

R.F.KELLER

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Comptroller General of the United States